IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2956 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHAILESH AMBALAL RAJPUT THRO.WIFE-CHHAYABEN SHAILESH- - Petitioner(s)
Versus
POLICE COMMISSIONER SHRI & 2 - Respondent(s)

==========

Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MR.DIPEN DESAI APP for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/08/2007

ORAL JUDGMENT

1. The petitioner has invoked Article 226 of the Constitution to challenge the order dated 26.12.2006 of the Police Commissioner, Vadodara

City, whereby, in exercise of his power conferred under Sub-Section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short “P.A.S.A.”), the petitioner was ordered to be detained. According to the grounds of detention supplied to the petitioner under Section 9 of P.A.S.A., the petitioner was reported to have been involved in an offence under the Prohibition Act which was registered on 10.12.2006 as III-C.R.No.651 of 2006 in Panigate Police Station, Vadodara and he was arrested on 10.12.2006 and released on bail thereafter. It is, on that basis, stated that the petitioner was involved in bootlegging activities and liquor being injurious to health and likely to cause danger to health of public, public order was disturbed. Thus, the main ground of detention sought to be made out on the basis of a solitary case of alleged offence under the Prohibition Act, 1949, involved stock of 53 bottles of so-called English liquor in sealed bottles which was found to have been dealt with by the petitioner.

2. By filing affidavit-in-reply of the Detaining Authority, it is *inter alia* stated that, “.....the grounds of detention are true and correct and based on documentary evidence. I say and submit that an offence has been registered against the petitioner under the provisions of Bombay Prohibition Act. I say and

submit that the petitioner is illegally storing and selling the liquor. I say and submit that documentary evidences are available to prove that the petitioner is involved in the bootlegging activities. I say and submit that liquor is injurious to health and likely to create health hazard in general public and thus, the public order has been disturbed and in connection with this, all the documents have been supplied to the petitioner. I say and submit that after satisfying myself fully, I passed the order of detention and same is just, legal and proper."

3. In the above facts, it was sought to be argued on behalf of the respondents that danger to public health caused by the activities of bootlegging by the petitioner substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing his detention were legal and justified.

4. However, as held by this Court in **Amarbhai Kanjibhai Nayak V/s. Commissioner of Police Ahmedabad City & Ors. [1999(3)G.L.R.2703]**

and in **Sohanlal Surajaram Visnoi V/s. State of Gujarat and others [2004(2)G.L.R. 1051]**, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of Sub-Section (4) of Section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction.

5. Therefore, in the facts and circumstances, impugned order dated 26.12.2006 of preventive detention is found and held to be unsustainable in law, and hence set aside with

the direction that the detenu shall be set at liberty forthwith unless required in connection with any other case to be detained in custody. Rule is made absolute with no order as to costs. Direct service is permitted.

(D.H.WAGHELA, J.)

Hitesh